

**OFFICE OF THE ATTORNEY GENERAL OF TEXAS****AUSTIN****GERALD C. MANN**
ATTORNEY GENERAL

Honorable G. S. Fraps
State Chemist
Chief, Division of Chemistry
Texas Agricultural Experiment Station
College Station, Texas

Dear Sir:

Opinion No. 0-4792

Re: Is it the duty of the
State Chemist to col-
lect the tax on the fertil-
izer sold to the AAA by the
United States Chemical
Company for distribution
in Texas and for them to
attach tax tags, and re-
lated questions?

Your letter requesting the opinion of this Depart-
ment on the questions stated therein reads in part as follows:

"Under date of June 13, 1942, you kindly
furnished Opinion 0-4617 regarding the collection
of inspection tax on fertilizer purchased outside
of the state by the Agricultural Adjustment Adminis-
tration and distributed in Texas.

"This matter has now come up in another form.
The United Chemical Company of Dallas, Texas has
been awarded the contract to supply the Depart-
ment of Agriculture through the AAA with a quantity
of bagged superphosphate. The Texas fertilizer law
requires fertilizer to have printed on the bag or
tag the net weight, the name of the fertilizer, the
guaranteed composition of nitrogen, available phos-
phoric acid and potash, and the name and address
of the manufacturer. The Agricultural Adjustment
Administration has suggested to the United Chemical
Company that the bag be printed as follows:

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'Superphosphate furnished by Agricultural Adjustment Administration for use only in carrying out soil building practices, manufactured by United Chemical Company, Dallas, Texas.'

"The guaranteed analysis and the net weight are both omitted. Some of the officials of the Agricultural Adjustment Administration have proposed to various state officials that in place of paying the tonnage tax, the AAA pay for analyses of each sample collected for inspection. With the payment so made it would be considerably less than the amount of the inspection tax.

"In your Opinion O-4617 you state a private person, firm, or corporation selling commercial fertilizer in a state to the Agricultural Adjustment Administration is subject to its laws. The fact that the sale is made to the Federal instrumentality does not clothe the vendor with the immunity possessed by the vendee. The same opinion was expressed by the solicitor of the U. S. Department of Agriculture in the opinion of which I furnished a copy to you.

"Please advise me if it is my duty as State Chemist to collect the tax on the fertilizer sold to the AAA by the United Chemical Company for distribution in Texas and require them to attach tax tags.

"Please advise if it is my duty to require the United Chemical Company to register this fertilizer, attach the information required by the fertilizer law, report the sale of this fertilizer and otherwise to comply with the requirements of the fertilizer law.

"Please advise if I have authority under the law to arrange with the Agricultural Adjustment Agency to pay for samples analyzed or otherwise modify the Texas fertilizer law with respect to the

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fertilizer sold to them by the United Chemical Company of Dallas for use within the state of Texas, in place of the tonnage tax."

The Texas Revised Criminal Statutes, 1925, Articles 1709 through 1720, and civil statutes, Articles 94 through 108, regulate the sale of commercial fertilizer within the state of Texas.

Our Opinion No. 0-4617 which is referred to in your letter as quoted above, among other things, holds in effect that the Agricultural Adjustment Administration is a federal agency or instrumentality, and that the inspection tax or fee cannot be collected from the Federal Agency. However, this opinion further holds that "a private person, firm, or corporation selling commercial fertilizer to the Agricultural Adjustment Administration in Texas is subject to its laws; the fact that the sale is made to the federal instrumentality does not clothe the vendor with the immunity possessed by the vendee".

It is further stated in the above mentioned opinion that:

* * *

"It is a familiar principle, established since *McCulloch v. Maryland*, 4 Wheat. 316 (U.S. 1819), that the States cannot interfere with, burden, or impede the Federal government or its authorized instrumentalities in the exercise of any of the powers vested by the Constitution of the United States in the Congress of the United States. The principle has been announced most frequently in those cases involving an attempt to collect a State tax from a Federal instrumentality. It has, however, equal application to the enforcement of State regulatory laws against Federal instrumentalities. *Johnson v. Maryland*, 254 U. S. 51; *Hunt v. U. S.* 278 U. S. 96; *Arizona v. California*, et al, 283 U. S. 423; *Ohio v. Thomas*, 173 U. S. 276; *Easton v. Iowa*, 188 U.S. 220; *Ex parte Willman*, 227

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Fed. 819; Posey v. T. V. A., 93 F. (2) 726;
United States v. Query, 21 Fed. Supp. 784.

"The exaction presently involved is an inspection fee, rather than a tax. But whether it be a tax or an inspection fee, an exertion of the taxing power or of the police power of the State, it operates directly and immediately upon the Federal instrumentality in the exercise of the power conferred upon it by the Congress, and directly burdens the instrumentality in the exercise of that power. The agency of the United States is immune from and cannot be required to pay the fee or tax involved.

* * *

In view of the foregoing, we respectfully answer your first question as quoted above, in the affirmative. As above stated, a private person, firm, or corporation selling commercial fertilizer to the Agricultural Adjustment Administration in Texas is subject to its laws; the fact sale is made to the Federal Instrumentality does not clothe the vendor with the immunity possessed by the vendee.

We answer your second question as stated above in the affirmative. We think that the case of Alabama vs. King and Boozer, 314 U. S. 1, specifically supports our conclusion with reference to your first and second questions. Also see the case of James vs. Dravo Contracting Company, 302 U. S. 114.

We respectfully answer your third question as stated above in the negative. The Legislature alone is authorized by the constitution (Article 1, Section 28) to suspend any law of the State. It is stated in Texas Jurisprudence, Volume 39, page 136:

* * * But in exercising power of suspending the operation of the general law, it is the general rule that the Legislature must suspend the law generally and as a whole, and cannot suspend it for

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individual cases or particular localities.* * *

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*
Ardell Williams
Assistant

AW:rw

APPROVED SEP 10, 1942

Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

